

maintaining and restoring habitat and controlling harvest through regulation," Leber said. "Stock enhancement has thus far largely been ignored as a management tool for marine fisheries. We are now not too far from being able to supplement these two strategies (habitat maintenance and restoration) with selective stock enhancement, where such (measures) can be supported by the local ecosystem.

"The old approach of stocking without careful assessment of impact cannot be tolerated today, especially in areas like Florida, where population growth is significant and fishing pressure is ever increasing.

"I like to think of our direction today is toward more responsible marine fisheries management, where the focus is being shifted to maintain the health of our fish populations and their habitat and environment, rather than only raising and stocking the maximum number of fish per taxpayer dollar."

I left the Mote Marine Laboratory with kind of a warm feeling inside. It's nice to know there are programs and people trying to steer us in the right direction.

The Mote Marine Laboratory is an independent, nonprofit research organization dedicated to the marine and environmental science. Located on an 11-acre site on City Island in Sarasota, Florida, the laboratory has extensive research and administrative facilities plus the Mote Aquarium, which attracts about 250,000 visitors a year.

The laboratory is staffed by 50 scientists with master's or doctorate degrees, plus support personnel and more than 1,000 volunteers. Its \$3.5 million research program is supported by grants, contracts, aquarium income, and donations. Founder William R. Mote has thus far donated all funding for the laboratory's aquaculture program.

The laboratory's other research and education activities include threatened species (sharks, sea turtles, manatees, etc.); fish vision; red tide; commercial fishing bycatch; improvement of recreational fishing; mackerel migrations; the impact of thermal power plants on sea grasses; river, estuary and wetland management; and the environmental impacts of chemicals, pesticides, and other forms of pollution.

For more information on the laboratory and its programs, contact Virginia Haley, 1600 Ken Thompson Parkway, Sarasota FL 34236, telephone (941) 388-1441, fax (941) 388-4312, or e-mail katura@mote.org.

EXTENSION OF REMARKS

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1998

Mr. BOB SCHAFFER of Colorado. Mr. Speaker, even nations need a soul. Indeed great countries establish traditions, institutions, and civil codes to reflect the integrity of their people. Taken together, these attributes give insight to a nation's character, and as such, signal the dignity of her people.

The United States Navy is but one American institution charged with defending our borders and maintaining our dignity. Among the Navy's first officers is Joseph E. Schmitz who has devoted considerable thought to the heavy matters we weigh today in Congress.

I hereby submit for the RECORD, Mr. Schmitz's scholarly analysis of current conditions created by the Commander-in-Chief. I

furthermore commend the conclusions of Mr. Schmitz to my colleagues and beg they prove persuasive in resolving the great question before us.

WHEN THE COMMANDER-IN-CHIEF MISLEADS,
WHO FOLLOWS?

OR WHAT DO WE TELL THE TROOPS NOW,
COMMANDER?

(By Joseph E. Schmitz¹)

How can a commanding officer of a warship ask an 18-year-old sailor to risk his life in the line of duty if the commander is not willing to risk his own personal ambitions for honor? He can't. A military leader must be the example, first and foremost. Congress should not lose sight of this reality of military leadership as it deliberates over the recent report of the Independent Counsel.

While the Constitution empowers Congress "To make Rules for the Government and Regulation of the land and naval Forces," each commander is responsible for enforcing these rules within his or her own command. At the same time, the President as Commander-in-Chief is ultimately responsible for enforcing these rules throughout—as well as for the overall good order and discipline of—the United States Armed Forces.

Technical legal arguments that the Uniform Code of Military Justice may not apply to the Commander-in-Chief miss the point. At issue are some of the first principles upon which our colonial forefathers pledged their "sacred honor," among which is Equal Justice Under Law, requiring that even the President be accountable to the Rule of Law (as opposed to the rule of men). By definition, the Rule of Law cannot be influenced by public opinion, whether through public opinion polls or otherwise.

By virtue of an Act of Congress in 1956, recodifying the First Article of the 1775 "Rules for the Regulation of the Navy of the United Colonies of North-America" into what is still public—albeit not well-publicized—law, "All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; . . . to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them."² This longstanding moral edict by Congress exemplifies the central theme of the "Legislation of Morality" seminar this author conducts at Georgetown University Law Center: democratically-enacted legislation is the societal analog to an individual's conscience formation process. At the national level, Congress promulgates the national conscience through public laws, essentially announcing what is right and what is wrong for the nation. As with the relationship between individual conscience and behavior, this societal con-

science formation process is distinct from, albeit integrally related to, the enforcement process.

In his August 17, 1998, nationally-televised speech, the President purported to accept full responsibility for misleading the nation about his "inappropriate" relationship with a White House intern. This confession by the Commander-in-Chief to both dishonorable and immoral conduct in the Oval Office, and the subsequent release of the Independent Counsel's Report and video tape, among other things, have amplified the need for all military leaders to uphold the moral authority of the First Article of the 1775 Navy Regulations, sometimes referred to as the "First Principle of the American Military."

In the "Code of Conduct for Members of the United States Armed Force," like all other members of the Armed Forces, I was admonished to "never forget that I am an American, fighting for freedom, responsible for any actions, and dedicated to the principles which made my country free." Every first-year law student learns that two of those principles are accountability "according to law" and "no man is above the law." According to the text of the Constitution, even an impeached President, after he is convicted by the Senate and removed from office for "treason, bribery, or other high crimes and misdemeanors" (U.S. Const., art. II, sec. 4), "shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law." U.S. Const., art I, sec. 3.

A few years ago, as the Naval Academy was attempting to deal with the worst cheating scandal in its 150-year history, a committee hearing on Capitol Hill featured a telling colloquy between Senator Robert C. Byrd and Rear Admiral Thomas Lynch, then Superintendent of the Naval Academy. At the beginning of the colloquy, Senator Byrd asked Admiral Lynch whether he was familiar with the adage, "You rate what you skate." Of course the Admiral was. But neither the Senator nor the Admiral discussed the adage further.

This Naval Academy adage is tantamount to a rule that "while officers are responsible for personal choices, they need not be accountable for poor choices unless caught." Such a mixed moral message fundamentally undermines the formation of character traits such as honesty, reliability, moral courage, and good judgment, upon which rest not only the tax dollars of hard-working Americans, but the lives of many Americans as well.

A crisis of military discipline looms if any commander, by his words and actions, promotes and adage that "you rate what you get away with, and even if you're caught, it's OK to evade accountability if you can get away with that"; a constitutional crisis looms if our legal system does not hold all officers with full responsibility to a standard of full accountability. Responsibility without accountability "according to law" undermines the core foundation of the Constitution, the aforementioned basic principle known as the Rule of Law, without which our Constitution is no more than a piece of paper.

The Armed Forces now have a more fundamental challenge to leadership training than simply instilling character traits adverse to lying, cheating, and stealing: How do we instill in young leaders the moral courage to admit when they are wrong and to accept accountability for mistakes made? Personal example by senior leaders, up to and including the Commander-in-Chief, is an essential starting point—and risk to personal ambitions is no excuse for any officer of the United States Armed Forces.

After the Commander-in-Chief holds himself accountable to the Rule of Law, or is

¹Mr. Schmitz graduated with distinction from the U.S. Naval Academy and earned his Doctor of Jurisprudence from Stanford Law School. He is currently an attorney in Washington D.C. and an Adjunct Professor of Law at Georgetown University Law Center, where he teaches an advanced constitutional law seminar on "Legislation of Morality: Constitutional and Practical Considerations" (the syllabus for which is available by request to jschmitz@pattonboggs.com).

²10 U.S.C. §5947. The 1775 version reads: "ART. 1. The Commanders of all ships and vessels belonging to the THIRTEEN UNITED COLONIES, are strictly required to shew in themselves a good example of honor and virtue to their officers and men, and to be vigilant in inspecting the behaviour of all such as are under them, and to discountenance and suppress all dissolute, immoral and disorderly practices; and also, such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same according to the usage of the sea" (www.history.navy.mil).

otherwise held accountable to the Rule of Law, "We the People"—even those of us who serve "at the pleasure of the President"—should follow his lead and talk about forgiveness. In the meantime, other commanders might do well by following the lead of, and by telling their troops to follow the lead of, Archbishop John Carroll, whose "A Prayer for the Republic" seems as timely now as when penned by the founder of Georgetown University 200 years ago: "We Pray Thee, O God . . . assist with Thy holy spirit of counsel and fortitude the President of the United States, that his administration may be conducted in righteousness, and be eminently useful to Thy people over whom he presides; by encouraging the due respect for virtue and religion; by a faithful execution of the laws in justice and mercy; and by restraining vice and immorality. Let the light of Thy divine wisdom direct the deliberations of Congress, . . ."

DALLAS LIVER TRANSPLANT PROGRAM

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1998

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I submit the attached materials to be included in the CONGRESSIONAL RECORD:

DALLAS LIVER TRANSPLANT PROGRAM, BAYLOR UNIVERSITY MEDICAL CENTER, CHILDREN'S MEDICAL CENTER OF DALLAS, DALLAS, TX, September 22, 1998.

Congresswoman EDDIE BERNICE JOHNSON, Longworth House Office Building, Washington, DC.

DEAR CONGRESSWOMAN JOHNSON: I am aware that the House recently passed H.R. 4250, the Patient Protection Act of 1998. I understand that the Patient's Bill of Rights Act, S. 2330, is currently under consideration as the companion bill.

Managed care is here to stay, but it has, as you are well aware, caused many significant problems. I have had personal, intimate experience with health care plans ever since they were first introduced into the Dallas health care market in the late 1980s. I support the provisions in the bill as it is currently worded. However, I find it very troublesome that the private insurance plans would not be required to emulate the same restrictions against financial incentives as the current Medicare rules provide. To allow a system that awards or penalizes physicians depending on how "cost effective" the care is they provide I believe is unethical. The simple thought of paying physicians extra if they do not provide health care is, in effect, repugnant to me. In addition, we must prevent the development of separate requirements for public and private health care sectors.

In my own particular field, that of transplantation, it is very obvious that transplant patients, i.e. recipients of kidneys, pancreas, livers, hearts, lungs and other organs, are so sick and have such serious disorders that they need to be cared for by specialists in their respective fields, both before and after the transplant. There are areas of the country where a specialist's care is not available. In those circumstances, the local physicians work very closely with the super-specialists at the transplant institutions. I think it is essential to allow chronically ill patients to have specialists designated as their primary care physicians.

On a separate vein, the basis for improvement of care and the safety of treatment we

can provide to patients is to allow the patients to participate in scientific, peer-reviewed, controlled trials. It is essential for medicine, and to have health care plans for-bid patient participation because of whatever reason they deem fit is unthinkable. They always want to participate and reap the benefits of any advances, especially if they can save a few dollars for themselves. However, they don't ever want to participate and help such developments along.

Finally, since I have seen health care being prevented and withheld by health care providers so many times, I believe it is imperative to allow patients to sue their carrier. The unconscionable way that many health care providers approach health care today is upsetting. One situation I bring to your attention is several years ago open of the biggest HMOs in the country had patients who were 20% more expensive to transplant than other patients. The reason was simply that the patients coming from this particular HMO were so much farther advanced and therefore more complex when they finally arrived for transplantation. The patients were simply prevented from having the transplants when they were in optimum condition, thus jeopardizing their lives. Clearly this was not the fault of the referring physicians or the physicians involved in the transplantation, but the HMOs corporate policy in trying to avoid the cost that would be incurred. Thus, the right to sue the carrier is absolutely essential to insure the patient's right to prevent withholding of care that is so widely prevalent today.

As always I appreciate your work in Congress and your involvement in the health care problems.

Yours most sincerely,

GORAN B. KLINTMALM, M.D.

Medical Director, Transplantation Services, Baylor University Medical Center—Dallas.

DEPARTMENT OF

HEALTH & HUMAN SERVICES,

Washington, DC, September 23, 1998.

HON. EDDIE BERNICE JOHNSON,

House of Representatives, Washington, DC.

DEAR MS. JOHNSON: Thank you for your letter regarding implementation of the surety bond requirement for home health agencies (HHAs) included in the Balanced Budget Act of 1997. I regret the delay in this response.

In response to concerns raised by Members of Congress and the home health industry, the Health Care Financing Administration (HCFA), in a rule published in the Federal Register on July 31, announced the indefinite suspension of the compliance date by which home health agencies must obtain a surety bond. As a result, home health agencies no longer have a date by which they must obtain a surety bond. The Congress has requested that the General Accounting Office conduct a study of the home health surety bond requirement, and upon completion of that study, HCFA will work in consultation with the Congress about the surety bond requirement. Following this review and consultation, the new date by which home health agencies must obtain bonds will be at least 60 days after HCFA publishes a revised rule requiring bonds, but will not be earlier than February 15, 1999.

I hope this information is helpful, and I appreciate your letter. A similar letter is being sent to the other members of the delegation who co-signed your letter.

Sincerely,

NANCY-ANN MIN DEPARLE,

Administrator.

A TRIBUTE TO MARGARET ROBERTS AND CHAR CALLIES

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1998

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today a recent editorial from one of the finest weekly papers I know, the Desert Trail newspaper in Twentynine Palms, California. This editorial pays tribute to two remarkable women who have made, and continue to make a tremendous difference to the people of Twentynine Palms.

[The Desert Trail, Thursday, Sept. 10, 1998]

CONGRATS TO OUR CITY CLERKS

There are upsides and downsides to every situation, and the announcement this week that Deputy City Clerk Char Callies will succeed retiring City Clerk Margaret Roberts is no exception.

We all knew the day would come when Margaret would hang up her city of Twentynine Palms seal and head into "retirement" with her husband, Marine Sgt. Maj. Alex Roberts.

That day will officially come on Dec. 18, when Margaret closes the door on an 11-year career with the city, City Manager Jim Hart announced Wednesday.

"Margaret was the city's first full-time employee and she was instrumental in helping guide the new city after incorporation. We all owe Margaret a sense of gratitude for her efforts on behalf of the city," Hart said in announcing that her resignation had been accepted reluctantly by the City Council for the end of the year.

There's probably not anyone in this city who doesn't owe Margaret some debt of gratitude. For more than a decade she has represented the city of Twentynine Palms in a most gracious and straightforward fashion. It seems there's nothing she can't do, nothing and no one she cannot handle with aplomb.

She has guided council candidates, provided information and assistance of all kinds to just about everyone and their brother and been there to lend an ear when needed.

Margaret has never failed to provide The Desert Trail with information we've requested and never hesitated to pick up the phone and let us know when a story needed to be told.

We will all miss Margaret, even as we wish her well, when she and Alex head East to pursue the next part of their lives together.

That said, we don't think the City Council could have made a better choice to replace Margaret than Char Callies.

A longtime resident of Twentynine Palms, Char is personable, caring, efficient, strong, hard-working and no-nonsense, just like her predecessor.

"Char has been working hard over the past three years to gain the knowledge and experience the City Council felt was needed to become city clerk," Hart said in announcing her promotion. "She has done an outstanding job as the city manager's secretary and deputy city clerk and this promotion is a recognition of Char's efforts."

We wholeheartedly congratulate Char on her promotion and look forward to working with her come mid-December. It's nice to know that she'll be on the job when Margaret says goodbye.

Mr. Speaker, please join me and our colleagues in recognizing the incredible contributions and achievements of these fine women.